

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JUN 01 2006

JAMES R LASSEN, CLERK
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WACIMA, WASHINGTON

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

8 PATRICIA A. LONG and
AMARIS J. LONG,

11 Plaintiffs,

12 vs.
13 PEND OREILLE COUNTY
14 SHERIFF'S DEPARTMENT, et al.,

16 Defendants.

9 No. CV-04-344-AAM
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**ORDER DENYING
MOTION TO DISMISS
AS SANCTION**

18 **BEFORE THE COURT** is the motion of the Pend Oreille County defendants
19 to dismiss plaintiffs' complaint as a sanction for failure to timely comply with this
20 court's April 13, 2006 order directing that within ten calendar days, plaintiff Patricia
21 Long provide defendants' counsel with a complete copy of her Social Security
22 Disability file, and complete copies of all records of any psychiatric or psychological
23 examinations or evaluations of her since 1985. Alternatively, this court directed that
24 within ten days, plaintiff provide defendants' counsel with signed authorizations
25 enabling him to procure these records directly from the Social Security
26 Administration and medical providers.

27 **ORDER DENYING MOTION
28 TO DISMISS AS SANCTION-**

1 In his affidavit, plaintiffs' counsel indicates that Patricia Long signed an
2 authorization on April 18, 2006, but that because of a family emergency and
3 circumstances arising therefrom, the authorization was not faxed to defendants'
4 counsel until May 23. Based on the affidavit, this court finds the failure of plaintiffs'
5 counsel to timely submit the authorization was "substantially justified"
6 and that other circumstances make an award of sanctions "unjust," especially such a
7 drastic sanction as dismissal. Fed. R. Civ. P. 37(b)(2). If, however, defendants'
8 counsel requests additional time for discovery and is able to establish that delay in
9 receipt of the signed authorization makes it unreasonable for defendants to meet the
10 July 14 discovery deadline, the court will be inclined to grant the request. The court
11 assumes that with the authorization, defendants' counsel has access to all the
12 information needed.

13 "Pending Oreille County Defendants' Motion To Dismiss As Sanction For
14 Violation Of Court Order" (Ct. Rec. 62) is **DENIED**.

15 **IT IS SO ORDERED.** The District Executive is directed to enter this order
16 and forward copies to counsel of record.

17 **DATED** this 14 of June, 2006.

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19 ALAN A. McDONALD
20 Senior United States District Judge

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27 **ORDER DENYING MOTION**
28 **TO DISMISS AS SANCTION-**